



THE STATE
of **ALASKA**
GOVERNOR MICHAEL J. DUNLEAVY

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September 26, 2019

Via Email and Hand Delivery

The Honorable Kevin Meyer
Lieutenant Governor
P.O. Box 110015
Juneau, Alaska 99811-0015

Re: *19SEBR Ballot Measure Application Review*
AGO No. 2019200644

Dear Lieutenant Governor Meyer:

You asked us to review an application for an initiative bill entitled:

An Act requiring the State of Alaska Department of Education and Early Development, the State Board of Education and Early Development, and the University of Alaska to act and make recommendations to ensure that all students in the State of Alaska receive a quality education. (19SEBR).

We conclude that the application complies with the constitutional and statutory provisions governing the initiative process, and we recommend that you certify the application.

I. The proposed initiative bill.

The bill proposed by this initiative would add duties to the Department of Education and Early Development (DEED) and the University of Alaska Board of Regents. 19SEBR contains seven sections and provides as follows:

Section 1 would add a new section to the uncodified law providing that this act be known as the "Alaska Students' Educational Bill of Rights."

Section 2 would add a new section to the uncodified law that would list findings regarding various education provisions in state law and the University of Alaska, and state that the policy of the State of Alaska is to provide a quality education to students of all ages.

Section 3 would add a new subsection to DEED's statutory duties under AS 14.07.020(a). It would require DEED to act and make recommendations relating to the safety of public schools, access to a high-quality education, voluntary pre-elementary programs, the salary and benefits of school teachers, class-size, career and technical education programs, extracurricular activities, culturally-sensitive curricula, proximity of the school to students' homes, and student social-emotional needs.

Section 4 would require the State Board of Education and Early Development to adopt regulations to implement Section 3 of the bill.

Section 5 would add a new subsection to the duties and powers of the University of Alaska Board of Regents under AS 14.40.170(a). The board would be required to ensure an affordable and accessible education, maintain university facilities, provide academic programs and educational technology supporting lifelong learning opportunities, encourage research activities, coordinate with Alaska's schools for teacher preparation and dual enrollment for students, collaborate with DEED and the Department of Labor and Workforce Development to prepare students for productive careers, and provide programs that contribute to Alaska's cultural diversity.

Section 6 states the bill would be effective 90 days after enactment.

Section 7 is a severability clause.

II. Analysis.

Under AS 15.45.070, the lieutenant governor must review an application for a proposed initiative bill within 60 calendar days of receipt and "certify it or notify the initiative committee of the grounds for denial." The application for the 19SEBR initiative was filed with the Division of Elections on August 1, 2019. The sixtieth calendar day after the filing of the initiative is Monday, September 30, 2019.

Under AS 15.45.080, certification shall be denied only if: "(1) the proposed bill to be initiated is not confined to one subject or is otherwise not in the required form; (2) the application is not substantially in the required form; or (3) there is an insufficient number of qualified sponsors."

A. Form of the proposed initiative bill.

In evaluating an application for an initiative bill, you must determine whether the application is in the “proper form.”¹ Specifically, you must decide whether the application complies with “the legal procedures for placing an initiative on the ballot, and whether the initiative contains statutorily or constitutionally prohibited subjects which should not reach the ballot.”²

The form of an initiative bill is prescribed by AS 15.45.040, which requires four things: (1) that the bill be confined to one subject; (2) that the subject be expressed in the title; (3) that the bill contain an enacting clause stating: “Be it enacted by the People of the State of Alaska”; and (4) that the bill not include prohibited subjects. The list of prohibited subjects is found in article XI, section 7 of the Alaska Constitution and AS 15.45.010. An initiative includes a prohibited subject when it makes or repeals appropriations; enacts local or special legislation; dedicates revenue; or creates courts, defines their jurisdiction, or prescribes their rules.³ You may deny certification only if the measure violates one or more of these restrictions, or if “controlling authority establishes its unconstitutionality.”⁴

The initiative bill meets all four requirements of AS 15.45.040. It is confined to one subject—the education of Alaska students. The subject is expressed in the title, and the bill has the required enacting clause. Finally, it does not include any of the prohibited subjects and is not clearly unconstitutional under existing authority. Although the bill would add duties to DEED and the Board of Regents that could ultimately cost money to implement, the decision whether to fund the additional obligations imposed under this bill and how to divide up resources among competing priorities would still lie with the

¹ Alaska Const. art. XI, § 2.

² *McAlpine v. Univ. of Alaska*, 762 P.2d 81, 87 n.7 (Alaska 1988).

³ Alaska Statute 15.45.010; *see also* Alaska Const. art. XI, § 7 (prohibiting dedicating revenue, creating courts, defining court jurisdiction or prescribing court rules).

⁴ *Kodiak Island Borough v. Mahoney*, 71 P.3d 896, 900 n. 22 (Alaska 2003).

legislature.⁵ Because the initiative bill would not set “aside funds for a particular purpose,” the initiative bill meets the constitutional requirements.⁶

We acknowledge that some of the initiative bill’s language may be inconsistent with existing statutes and difficult to implement because of ambiguity in the bill’s language. For example, some of the new duties imposed on DEED include areas that are statutorily assigned to, and have historically been decided at, the local school district level. Areas that have been historically handled at the local level include class size, teacher salaries and benefits, and curricula. Section 3 of the initiative bill, however, states that DEED shall “implement the state education policy set forth in AS 14.03.015 by acting and making recommendations” on those same subjects. Read together, the bill’s language could be interpreted to only require that DEED make recommendations on those matters, but that school districts are left with ultimate authority to decide. But, as written, it is unclear whether DEED would be required to assume authority over these areas and adopt regulations establishing standards for each school district—or simply make recommendations that would inform decisions by each school district.

The bill’s language is also very aspirational without concrete requirements. For example, the bill would require the University of Alaska to “ensure that academic programs and educational technology, including connectivity among university campuses, support lifelong learning opportunities for Alaskans in urban and rural Alaska.” But the bill does not explain how this standard would be met, or how the University would meaningfully ascertain whether it is adequately supporting lifelong learning. In the case of DEED, it would be required to act and make recommendations to ensure that “voluntary pre-elementary programs and public schools prepare students to be good citizens and productive members of society.” Whether someone is a productive member of society can be a fairly subjective question dependent on political philosophies, geographic location, and sociological factors. It may be difficult for DEED to adopt a clear regulation defining these terms and setting standards that can be uniformly applied among all the school districts. DEED and the Board of Regents would have to grapple with how to satisfy these new and additional duties, while still also upholding existing, potentially inconsistent, requirements.

⁵ See *Lieutenant Governor of State v. Alaska Fisheries Conservation Alliance, Inc.*, 363 P.3d 104, 108 (Alaska 2015) (recognizing that the two “core objectives” of the constitutional limitation are “(1) to prevent give-away programs that appeal to the self-interest of voters and endanger the state treasury; and (2) to preserve legislative discretion by ensuring that the legislature, and only the legislature, retains control over the allocation of state assets among competing needs”).

⁶ *McAlpine*, 762 P.2d at 88.

Despite this lack of clarity and potential confusion in the bill's text, inconsistency with existing statutes and ambiguous bill language do not provide grounds to deny certification of an initiative. As explained above, the initiative bill meets the constitutional and statutory requirements, and that is all that matters for purposes of certification of the initiative application.

B. Form of the application.

The form of an initiative application is prescribed by AS 15.45.030, which provides that the application must include the

- (1) proposed bill;
- (2) printed name, the signature, the address, and a numerical identifier of not fewer than 100 qualified voters who will serve as sponsors; each signature page must include a statement that the sponsors are qualified voters who signed the application with the proposed bill attached; and
- (3) designation of an initiative committee consisting of three of the sponsors who subscribed to the application and represent all sponsors and subscribers in matters relating to the initiative; the designation must include the name, mailing address, and signature of each committee member.

The application on its face meets the first requirement, as well as the latter portion of the second requirement regarding the statement on each signature page. With respect to the first clause of the second requirement, we understand the Division of Elections has reviewed the sponsor signatures and determined that the application contains the signatures and addresses of 155 qualified voters. The application also designates three sponsors to serve on an initiative committee, thus satisfying the third requirement. Therefore, the application is in the proper form.

III. Proposed ballot and petition summaries.

We have prepared a ballot-ready petition title and summary to assist you in complying with AS 15.45.090(a)(2) and AS 15.45.180, as is our office's standard practice. Under AS 15.45.180, a ballot proposition must include a "true and impartial summary of the proposed law." That provision also requires that an initiative's title be limited to 25 words, and that the number of words in the body of the summary be limited to the number of sections in the proposed law multiplied by 50. "Section" is defined as "a

provision of the proposed law that is distinct from other provisions in purpose or subject matter.”

The bill has seven sections, which would allow the number of words in the summary not to exceed 350. Below is a summary with 22 words in the title and 123 words in the summary, which we submit for your consideration.

An Act Adding Duties to the Department of Education and Early Development and the Board of Trustees of the University of Alaska

This act would declare that the State of Alaska must ensure students receive a quality public education. This act would add duties to the Department of Education and Early Development and the Board of Regents of the University of Alaska. The department would have additional duties relating to:

1. the safety of public schools
2. access by all children to a high-quality education
3. voluntary pre-elementary programs
4. recruitment and retention of teachers
5. class-size
6. career and technical education
7. afterschool activities
8. culturally-sensitive lesson plans
9. distance between the school and the students' homes

The Board of Regents would have additional duties relating to:

1. an affordable and accessible education
2. maintenance of university facilities
3. academic programs and educational technology
4. research activities
5. teacher preparation
6. dual enrollment for students
7. career preparation
8. cultural diversity

Should this initiative become law?

This summary has a Flesch test score of 40.6. We believe the summary satisfies the target readability standards of AS 15.80.005.⁷

IV. Conclusion.

The proposed bill and application are in the proper form and the application complies with the constitutional and statutory provisions governing the use of the initiative. We therefore recommend that you certify the initiative application and notify the initiative committee of your decision. You may then begin to prepare a petition under AS 15.45.090.

Please contact us if we can be of further assistance to you on this matter.

Sincerely,

KEVIN J. CLARKSON
ATTORNEY GENERAL

By:



Cori Mills
Assistant Attorney General

⁷ Under AS 15.80.005(b), “The policy of the state is to prepare a neutral summary that is scored at approximately 60.” While this summary is below the target readability score of 60, the Alaska Supreme Court has upheld ballot summaries scoring as low as 33.8 for a complicated ballot initiative. *See* 2007 Op. Att’y Gen. (Oct. 17; 663-07-0179); *Pebble*, 215 P.3d at 1082-84. In our view, the duties that would be added by this bill use terms of art generally understood by the public that should not be condensed further.